

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

KIMBERLY PREVETT,

Plaintiff,

v.

DIAMOND AUTO GLASS, INC. a
Montana corporation, d/b/a
HARMON AUTO GLASS,

Defendant.

NO. CV-05-179-RHW

**ORDER GRANTING
PLAINTIFF'S MOTION FOR
REMAND**

Before the Court is Plaintiff's Motion to Remand (Ct. Rec. 3). Plaintiff objects to Defendant's removal of this action and moves this Court for remand of the case to Spokane County Superior Court.

BACKGROUND FACTS

Defendant is a Montana corporation that operates a Harmon Auto Glass outlet in Spokane, Washington. Plaintiff Kimberly Prevett, a citizen of Washington state, was employed at Defendant's Spokane outlet for approximately three (3) weeks. In April 2005, Plaintiff discovered that she was pregnant. Plaintiff informed the Regional Manager for Defendant of her pregnancy on April 19, 2005. On April 22, 2005, the Defendant's Regional Manager informed her that she was being let go because "she was not working the way he expected." According to Plaintiff, she was terminated because she was pregnant. According to Defendant, her employment was terminated for poor performance.

Shortly after being terminated, Plaintiff suffered a miscarriage. Plaintiff

1 contends that her termination of her employment contributed to her miscarriage.

2 3 **PROCEDURAL HISTORY**

4 On May 16, 2005, Plaintiff sued Defendant Diamond Auto Glass, a Montana
5 corporation that operates Harmon Auto Glass, in Spokane County Superior Court
6 for pregnancy discrimination and wrongful termination. Defendant removed the
7 case to a federal court on June 13, 2005, based on diversity jurisdiction (Ct. Rec.
8 1). Plaintiff now seeks to remand on the basis that this Court does not have
9 jurisdiction because the amount in controversy requirement of diversity jurisdiction
10 is not met (Ct. Rec. 3).

11 **DISCUSSION**

12 In order for removal to be proper, the federal court must have original
13 subject matter jurisdiction over an action. 28 U.S.C. § 1441(a). Federal district
14 courts have jurisdiction over cases in diversity. 28 U.S.C. § 1332. In order for the
15 federal court to exercise diversity jurisdiction over a civil action, two prongs must
16 be satisfied: (1) diversity of citizenship and (2) amount in controversy. *Id.* The
17 parties do not dispute that diversity of citizenship exists. Plaintiff is a citizen of
18 Washington, and Defendant is a Montana corporation, with its principal place of
19 business in Montana.

20 Diversity jurisdiction exists under § 1332 only “where the matter in
21 controversy exceeds the sum or value of \$75,000, exclusive of interest and costs,
22 and is between citizens of different States.” The calculation of the amount in
23 controversy includes attorneys fees and costs when the underlying statute
24 authorizes such award. *Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1156 (9th
25 Cir. 1998). The parties disagree whether the amount of controversy is met in this
26 case.

27 The removal statute is strictly construed against removal jurisdiction. *Gaus*
28 *v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992). Where doubt regarding the right

1 to removal exists, a case should be remanded to state court. *Id.* There is a “strong
2 presumption” against removal jurisdiction. *Id.* If the federal district court lacks
3 subject matter jurisdiction, then it is mandatory that the district court remand the
4 case to the appropriate state court in which the action was originally filed. 28
5 U.S.C. § 1447.

6 When the amount in controversy is not evident from the face of the
7 complaint, the party seeking to remove to federal court has the burden of showing
8 “by a preponderance of the evidence” that the amount in controversy is greater
9 than or equal to \$75,000. *Valdez v. Allstate Ins. Co.*, 372 F.3d 1115, 1117 (9th Cir.
10 2004). Although the Ninth Circuit has not directly addressed the types of evidence
11 a defendant may rely on to satisfy the preponderance of the evidence test for
12 jurisdiction, it has endorsed the Fifth Circuit’s practice of considering facts
13 presented in the removal petition as well as any “summary- judgement-type
14 evidence relevant to the amount in controversy at the time of removal.” *Matheson*
15 *v. Progressive Specialty Ins. Co.*, 319 F.3d 1089, 1090 (9th Cir. 2003); *see also*
16 *Cohn v. Petsmart, Inc.*, 281 F.3d 837, 840 (9th Cir. 2002) (per curiam) (“A
17 settlement letter is relevant evidence of the amount in controversy if it appears to
18 reflect a reasonable estimate of the plaintiff’s claim.”); *Singer v. State Farm Mut.*
19 *Auto Ins. Co.*, 116 F.3d 373, 376-77 (9th Cir. 1997) (holding that a judicial
20 admission may establish the amount in controversy). Removal cannot be based on
21 conclusory allegations. *Matheson*, 319 F.3d at 1090. Where doubt regarding the
22 right to removal exists, the case should be remanded to state court. *Id.*; *Sanchez v.*
23 *Monumental Life Ins. Co.*, 102 F.3d 398, 403-04 (9th Cir. 1996).

24 In her complaint, Ms. Prevett states her claim for damages as follows:

25 As a direct and proximate result of the pregnancy discrimination and
26 wrongful termination, Plaintiff has suffered and continues to suffer
27 economic and emotional injuries and other damages in specific amounts to
be proven at the time of trial.

28 (Ct. Rec. 1).

1 She seeks:

2 (1) actual damages as defined by Washington discrimination laws; . . .

3 (2) costs of litigation and attorney's fees; . . .

4 (3) interest calculated at the maximum amount allowed by law; . . .

5 (4) compensation for adverse income tax consequences; . . . and

6 (5) leave to amend Plaintiff's complaint for damages.

7 (*Id.*)

8 In her Motion for Remand, Plaintiff adduces facts that her damages for lost
9 wages amount to \$1,301.00. Plaintiff has not set a front pay damages amount. She
10 concedes that her damages for emotional distress were unknown and
11 unquantifiable at the time of removal.

12 Defendant has not met its burden of showing by a preponderance of the
13 evidence that the amount of controversy requirement is met. Although it appears
14 that Plaintiff's claim will be at least \$35,000, since she did not submit to
15 mandatory arbitration in Spokane County Superior Court, this amount is
16 significantly less than the \$75,000 amount required for diversity jurisdiction.
17 Defendant has not provided the Court with evidence of similar awards for similar
18 claims. Given that § 1332 is strictly construed against removal, and given that if
19 doubt exists regarding whether there is a right to removal, the case should be
20 remanded to state court, the Court cannot find that it has subject matter jurisdiction
21 to hear this case.

22 Accordingly, **IT IS HEREBY ORDERED:**

23 1. Plaintiff's Motion to Remand (Ct. Rec. 3) is **GRANTED**.

24 2. The Court hereby **REMANDS** this case to the Spokane County Superior
25 Court.

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1 **IT IS SO ORDERED.** The District Court Executive is directed to enter this
2 Order and forward copies to counsel.

3 **DATED** this 26th day of September, 2005.

4
5 s/ ROBERT H. WHALEY
6 Chief United States District Court
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